

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

THOMAS R. MONTGOMERY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-15-289-M
)	
JASON HICKS, et al.,)	
)	
Defendants.)	

ORDER

On May 29, 2015, United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation in this action brought pursuant to 42 U.S.C. § 1983, alleging a violation of plaintiff's constitutional rights. The Magistrate Judge recommended that (1) plaintiff's Fourth Amendment claims for malicious prosecution and harassment (Counts II and III) related to his October 2011 criminal charges be dismissed without prejudice and that in light of the applicable statute of limitations, plaintiff be directed to file an amended complaint within twenty (20) days of any order adopting the Report and Recommendation, only insofar as he attempts to amend the Fourth Amendment malicious prosecution and harassment claims related to his October 2011 criminal charges; (2) all claims against defendants in their official capacities be dismissed with prejudice for failure to state a claim upon which relief can be granted, and (3) plaintiff's claims under the Fourth, Eighth and Fourteenth Amendments, as well as his purported claim under HIPAA and his state law defamation claim, related to his 2009 and May 2011 arrests and subsequent criminal charges (Counts I, IV, and V) be dismissed with prejudice as untimely. Plaintiff was advised of his right to object to the Report and Recommendation by June 15, 2015. A review of the file reveals no objection has been filed.

Upon de novo review, the Court finds that the Report and Recommendation should only be adopted in part. Specifically, the Court finds that plaintiff's claims against defendants in their official capacities should not be dismissed with prejudice for failure to state a claim upon which relief can be granted. While Eleventh Amendment sovereign immunity precludes suits against states, state agencies, and state officials sued in their official capacities, the defendants in the instant action are all employees of the Grady County District Attorney's Office, and as such are county employees/officials and not state employees/officials. However, the Court finds that plaintiff's claims against defendants in their official capacity brought under the Fourth, Eighth and Fourteenth Amendments, as well as plaintiff's purported claim under HIPAA and his state law defamation claim, related to plaintiff's 2009 and May 2011 arrests and subsequent criminal charges (Counts I, IV, and V) should be dismissed with prejudice as untimely, for the reasons set forth in the Report and Recommendation.

Accordingly, the Court:

- (1) ADOPTS IN PART the Report and Recommendation [docket no. 9] issued by the Magistrate Judge on May 29, 2015;
- (2) DISMISSES without prejudice plaintiff's Fourth Amendment claims for malicious prosecution and harassment (Counts II and III) related to his October 2011 criminal charges and in light of the applicable statute of limitations, DIRECTS plaintiff to file an amended complaint, only as to his Fourth Amendment malicious prosecution and harassment claims related to his October 2011 criminal charges, within twenty (20) days of the date of this Order; and
- (3) DISMISSES with prejudice plaintiff's claims under the Fourth, Eighth and Fourteenth Amendments, as well as his purported claim under HIPAA and his state law defamation claim, related to his 2009 and May 2011 arrests and subsequent criminal charges (Counts I, IV, and V) as untimely.

IT IS SO ORDERED this 26th day of June, 2015.


VICKI MILES-LaGRANGE
CHIEF UNITED STATES DISTRICT JUDGE